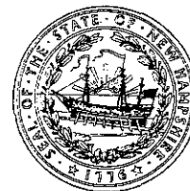




State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



PLEASE NOTE: Effective September 1, 2003, the street address is 29 Hazen Drive.
September 24, 2003

College Pro Painters, (U.S.) Ltd.
Attn: Kevin Barnett, Manager
Nashua/Hudson Franchise
2 Beech Street
Nashua, NH 03060

Re: Docket No. AF 03-029 - Administrative Fine by Consent Agreement

Dear Mr. Barnett:

Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in this matter executed by Harry T. Stewart, P.E., Water Division Director, and accepted by Commissioner Michael P. Nolin on September 23, 2003. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,


Michael Solafani,
Legal Assistant

cc: Harry T. Stewart, P.E., Director, Water Division
Gretchen Rule, DES Legal Unit
Susan Weiss Alexant, Hearings and Rules Attorney
Mark R. Harbaugh, DES Legal Unit
John R. Bush, P.E., Administrator, DES/WD/WWEB
Cheryl McGary, DES/WMD/SIS
Joy Hilton, USAEPA, Region I
Brian Morrissey, Assistant Fire Chief, Nashua Fire Rescue
Lyle Estell, College Pro Painters
Ralph Pushor
Michael Gospodarek
Jowl McDonald



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3503 FAX (603) 271-2867



PLEASE NOTE: Effective September 1, 2003, the street address is 29 Hazen Drive.

College Pro Painters, (U.S.) Ltd.
Attn: Kevin Barnett, Manager
Nashua/Hudson Franchise
2 Beech Street
Nashua, NH 03060

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 03-029

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Water Division, and College Pro pursuant to RSA pursuant to RSA 485-A:22, V. This Administrative Fine by Consent is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Water Division ("DES") is a duly constituted administrative agency of the State of New Hampshire, having main offices at 6 Hazen Drive, Concord, NH.
2. College Pro Painter, (US) Ltd., is a commercial painting contracting business, owned by Kevin Barnett, having a mailing address of 2 Beech Street, Nashua, NH 03063.

III. BACKGROUND AND ALLEGATIONS

1. Pursuant to RSA 485-A:13 and related sections, DES regulates the discharge of pollutants to surface waters under a permit system. As part of this program, the Commissioner of DES has adopted Env-Ws 401 - 405 relating to permits and has adopted Env-Ws 1700 to establish water quality standards for the state's waters.
2. Pursuant to RSA 485-A:22, V, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations relating to this program. Pursuant to this section, the Commissioner has adopted Env-C 603 to establish the schedule of fines for such violations.
3. On or about June 16, 2003, College Pro Painters, (US) Ltd. ("CP") provided painting services to Michael Gospodarek located at 19 Carson Circle in Nashua, New Hampshire.
4. On June 16, 2003, DES personnel investigated a complaint of an unpermitted discharge of latex paint to an unnamed detention pond located in the Westgate Village Condominium Complex, in Nashua, New Hampshire. The complainant reported a plume of paint entered the pond causing a white film to spread out approximately forty to fifty feet across the pond's surface. The plume then, reportedly, settled to the bottom of the pond.

5. Upon his investigation, the complainant determined the material disposed consisted of white latex paint and water; the material entered a storm drain on Carson Circle; flowed through the system outlet; and into the detention pond located in Westgate Village Condominiums, in Nashua, NH. The complainant contacted the Nashua Fire Department.
6. The Nashua Fire Department HazMat team responded to the complaint, arriving at the site at approximately 12:15 pm. The CP employees on-site informed the Fire Department that CP had dropped a bucket of paint containing between 32 to 52 ounces of white latex paint onto the driveway, while painting the house located at 19 Carson Circle, some time between 9:30am and 11:30 am. CP then washed the paint off the driveway into a nearby storm drain on Carson Circle. The Nashua Fire Department called CP's owner at approximately 12:20 pm.
7. The owner of CP arrived at the site at approximately 12:30 pm.
8. CP contacted Clean Harbors, Incorporated ("Clean Harbors") and DES for information on how to clean up the spill.
9. DES responded that if a film existed on the pond surface or on the bottom, then CP should remove the residual paint film.
10. CP contacted Clean Harbors and requested their assistance to remove the paint film from the pond.
11. The Nashua Fire Department left the scene at approximately 1:40 pm.
12. Clean Harbors responded to the call and arrived on the scene at approximately 4:00 pm. Upon investigation of the storm drain and pond, Clean Harbors' personnel found no evidence of the paint spill or the film, and reported their findings to the Nashua Fire Department via telephone.
13. Pursuant to the laws of 1967, 147:15, all Nashua River tributaries and watershed surface waters are classified as Class B waters
14. NH Code of Administrative Rules Env-Ws 1703 Surface Water Quality Standards Section 1703.10 (b) Color, states Class B waters shall contain no color in such concentrations that would impair any existing or designated uses, unless naturally occurring.
15. Reports from the June 16, 2003 investigation indicate the pond water was white from the paint wash water.
16. In a phone conversation with DES on June 23, 2003, CP admitted his staff had washed the paint spill into the storm drain.
17. RSA 485-A:13, I(a) states that "It shall be unlawful for any person or persons to discharge or

dispose of any sewage or waste to the surface water or groundwater of the state without first obtaining a written permit from the Department of Environmental Services.”

18. CP does not possess a National Pollutant Discharge Elimination System (“NPDES”) permit.

IV. ALLEGATIONS

1. CP discharged an undetermined amount of wash water to the storm drain system that discharges to the detention pond of the Westgate Village Condominiums, whose outlet flows westerly, under Westgate Crossing Road and discharges to an unnamed wetland area which eventually connects to the Nashua River.

V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

1. For violating RSA 485-A:13, I(a), Env-C 603.05(a) specifies a fine of \$2,000 per 5,000 gallons or portion thereof discharged or \$2,000 per hour or portion thereof that the sewage or other wastes are discharged, whichever is greater. Based on investigation records, CP discharged an unknown volume of painting wash water into the storm drain and ultimately into the unnamed wetland area. For this violation, DES is seeking a fine of \$2,000.

2. For violating surface water quality standards specified in Env-Ws 1703.10 (b), Env-Ws 603.08 (c) specifies a fine of \$2,000 per violation for each parameter violated. For this violation, DES is seeking \$2,000.

3. For these violations, DES is seeking a total administrative fine of \$4,000.

4. Of the \$4,000 fine, DES agrees to suspend \$1,843 contingent upon CP complying with environmental laws administered by DES for two years from the effective date of this agreement. DES recommends that CP institute an employee’s training program to help achieve compliance with environmental laws.

5. CP agrees to pay the remaining \$2,157 as follows:

a) CP will provide painting services (labor, equipment, and materials) to the Nashua Fire Department. The details of the painting services at the Spit Brook Road Fire House are as follows, based on CP’s July 17, 2003 proposal:

Women’s bathroom	10 hours
Bedroom 1	13 hours
Bedroom 2	13 hours
Men’s Bathroom	20 hours
Closet	05 hours
Total	= 61 hours

- b) In addition to the labor hours, supplies and paint would also need to be purchased for the job, including some supplies specific to interior painting that College Pro Nashua/Hudson does not already own.

Labor	61 hours x Charge Rate-Profit	=	\$1,708.00
Paint	8 gallons x Contractor Paint Price	=	\$ 224.00
Supplies	Miscellaneous Supplies	=	\$ 225.00
Total			= \$2,157.00

6. The painting services shall be completed to the satisfaction of Assistant Fire Chief Brian Morrissey of the Nashua Fire Department by August 29, 2003.

7. Notification of completion shall be signed by both CP and Assistant Fire Chief Morrissey and submitted to DES' office by September 2, 2003 at the following address:

DES Water Division
Wastewater Engineering Bureau
Attention: Mary Jane Meier
P.O. Box 95
Concord, NH 03302-0095

8. Payment that becomes due pursuant to Paragraph V. 4 shall be made by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attention: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095

9. If any payment is made by check that is returned due to insufficient funds, pursuant to NH RSA 6:11-a DES may charge a fee in the amount of 5% of the face amount of the check or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check, to cover the costs of collection.

10. By executing this Administrative Fine by Consent, CP waives its rights to a hearing on or any appeal of the administrative fines identified in Paragraphs V.1 through V.4, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction.

11. The effective date of this Administrative Fine by Consent will be the date on which it is signed by an authorized representative of CP; the Director of the Water Division; and the Commissioner of DES.

12. No failure by DES to enforce any provision of this Administrative Fine by Consent after any

breach or default will be deemed as a waiver of DES' rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this agreement on any further breach or default.

College Pro Painters (US) Ltd.

COPY


By: Kevin Barnett
Duly authorized

8-28-03
Date

Department Of Environmental Services

COPY


Harry T. Stewart, P.E. Director
Water Division

9/1/03
Date

COPY


for Michael P. Nolin, Commissioner

9/23/03
Date

cc: Mark Harbaugh - DES Legal Unit

John R. Bush, P.E.-Administrator, DES/WD/WWEB

Sharon L. Ducharme, P.E.-Supervisor, DES/WD/WWEB

Cheryl McGary- DES/WMD/SIS

Joy Hilton-USEPA, Region I

Brian Morrissey- Assistant Fire Chief, Nashua Fire Rescue, 177 Lake Street, Nashua, NH 03060

Ralph Pushor- 57 Spring Cove Road, Nashua, NH 03062

Michael Gospodarek- 19 Carson Circle, Nashua, NH 03060

Joe McDonald- Clean Harbors, Incorporated

Lyle Estell- College Pro Painters, 200 Dexter Ave, Watertown, MA 02172